

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

United Fabrics International, Inc.,
a California Corporation,

Plaintiff,

v.

MACKSON, INC., doing business as
“SHE’S SO COOL,” a New York
Corporation; et al.,

Defendants.

Case No.: CV12-7224 RGK (JEMx)

Assigned Judge: R. Gary Klausner

~~[PROPOSED]~~

**ORDER ON STIPULATION
FOR ENTRY OF PROTECTIVE
ORDER RE CONFIDENTIALITY**

ORDER

The Court, having read and considered the Stipulation for Entry of a
Protective Order filed by the parties, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. A party to this action who produces or provides documents, things,
testimony, or other information, which he, she, or it reasonably believes to
comprise or contain Confidential Information, and which he, she, or it desires to be
subject to this Protective Order, shall designate such information or materials as
either “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY.”
Confidential Information is information which has not been made public, including

1 trade secrets or other confidential research, development, or commercial
2 information, material required to be kept confidential by state or federal law, or
3 highly sensitive personal information such as medical records. Attorneys' Eyes
4 Only Information is extremely sensitive Confidential Information whose disclosure
5 to another party or non-party would create a substantial risk of serious injury that
6 could not be avoided by less restrictive means.

7 2. The designation of documents, things, testimony, or other information
8 as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall
9 be made as follows:

10 (a) Documents and things comprising or containing Confidential
11 Information shall be designated by prominently stamping or marking the
12 documents or things with the term "CONFIDENTIAL" or "CONFIDENTIAL-
13 ATTORNEYS' EYES ONLY." If a confidential document consists of multiple
14 pages, each page of the document shall be so stamped or marked.

15 (b) A deposition transcript comprising or containing Confidential
16 Information shall be designated "CONFIDENTIAL" or "CONFIDENTIAL-
17 ATTORNEYS' EYES ONLY" by requesting such treatment thereof either on the
18 record at the time of the deposition or by written notice after service of the
19 deposition transcript. If confidential treatment of a deposition transcript is
20 requested on the record at the time of the deposition, the requesting party shall
21 instruct the court reporter to stamp or mark each page of the transcript containing
22 the Confidential Information with the terms "CONFIDENTIAL" or
23 "CONFIDENTIAL-ATTORNEYS' EYES ONLY." The requesting party may
24 also instruct the court reporter to separately bind such designated pages of the
25 transcript. If confidential treatment of a transcript is requested by a party by
26 written notice after completion of a deposition, such written notice shall be mailed
27 to all other parties within twenty (20) days after completion and service of the
28 transcript. Such written notice shall specifically identify by page and line number

1 all portions of the transcript that should be treated as “CONFIDENTIAL” or
2 “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” in accordance with this
3 Protective Order. Documents or things used as exhibits at a deposition that a party
4 desires to be subject to this Protective Order shall be separately stamped or marked
5 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” as
6 specified in paragraph 2(a).

7 (c) Any party may designate documents or things produced by a third
8 party pursuant to a subpoena as “CONFIDENTIAL” or “CONFIDENTIAL–
9 ATTORNEYS’ EYES ONLY” by providing written notice to each other party
10 within ten (10) days of receipt of the documents or things produced by the third
11 party. Such written notice shall specifically identify each document or thing
12 produced by the third party that should be treated as “CONFIDENTIAL” or
13 “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” in accordance with this
14 Protective Order.

15 (d) Notwithstanding any other provision of this Order, if any party
16 believes that any document or other information not designated as
17 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” should
18 be so designated (except documents or information belonging to another party),
19 that party shall notify the other parties within 30 days following production of the
20 documents or other information and request that the information be designated as
21 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY.” A
22 party requesting that documents be treated as “CONFIDENTIAL” or
23 “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” in accordance with this
24 paragraph shall also provide each other party with copies of such documents that
25 have been stamped or marked “CONFIDENTIAL” or “CONFIDENTIAL–
26 ATTORNEYS’ EYES ONLY” in the manner indicated above. Documents or
27 information designated as “CONFIDENTIAL” or “CONFIDENTIAL–
28 ATTORNEYS’ EYES ONLY” in accordance with this paragraph shall be treated in

1 accordance with such designation from the date of receipt of the request that they
2 be so treated and receipt of copies of the documents that have been appropriately
3 stamped or marked “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’
4 EYES ONLY.”

5 3. By designating a document, thing, testimony, or other information as
6 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” in
7 accordance with this Protective Order, the party making such designation certifies
8 that there is a good faith basis in both fact and law for the designation.

9 4. In the absence of designating a document, thing, testimony, or other
10 information as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES
11 ONLY” in accordance with this Protective Order, such documents, things,
12 testimony, or other information shall be deemed to be non-confidential and not
13 restricted by this Protective Order.

14 5. Information and materials designated as “CONFIDENTIAL” or
15 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” shall be held by counsel in
16 confidence and shall be used solely in connection with the prosecution, defense, or
17 settlement of this action. Information and materials designated as
18 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” shall
19 not be disclosed to any person except as hereinafter provided. Information and
20 materials designated “CONFIDENTIAL” pursuant to this Protective Order
21 (including any copies, summaries, excerpts, and abstracts derived therefrom) may
22 be disclosed, directly or indirectly, only to the following qualified persons:

23 (a) The Court before which this action is pending and the clerks and other
24 personnel of the Court;

25 (b) The attorneys of record for the parties in this matter;

26 (c) The office personnel employed by the attorneys of record working
27 under direct supervision of said attorneys;

28 (d) Any party, and any party’s officers, directors, or partners;

1 (e) Experts or other persons retained by counsel to assist in the
2 prosecution, defense, or settlement of this action, provided that said experts and
3 consultants expressly agree to be bound by the terms of this Protective Order;

4 (f) Third-party witnesses to the extent they have had access to the
5 Confidential Information prior to the entry of this Protective Order;

6 (g) Court reporters at depositions or other proceedings in this matter and
7 persons providing litigation support services for counsel of record including
8 photocopying, videotaping, transcribing, translating, and preparing exhibits;

9 (h) Any mediator or arbitrator mutually selected by the parties or
10 appointed by the Court for the purpose of assisting in the settlement of this action;
11 and

12 (i) Such other persons as the parties may agree to in writing, or who may
13 be designated by the Court.

14 6. Information and materials designated “CONFIDENTIAL–
15 ATTORNEYS’ EYES ONLY” pursuant to this Protective Order (including any
16 copies, summaries, excerpts, and abstracts derived therefrom) may be disclosed,
17 directly or indirectly, only to the following qualified persons:

18 (a) The Court before which this action is pending and the clerks and other
19 personnel of the Court;

20 (b) The attorneys of record for the parties in this matter;

21 (c) The office personnel employed by the attorneys of record working
22 under direct supervision of said attorneys;

23 (d) Experts or other persons retained by counsel to assist in the
24 prosecution, defense, or settlement of this action, provided that said experts and
25 consultants expressly agree to be bound by the terms of this Protective Order;

26 (e) Third-party witnesses to the extent they have had access to the
27 Confidential Information prior to the entry of this Protective Order;

28 (f) Court reporters at depositions or other proceedings in this matter and

1 persons providing litigation support services for counsel of record including
2 photocopying, videotaping, transcribing, translating, and preparing exhibits;

3 (g) Any mediator or arbitrator mutually selected by the parties or
4 appointed by the Court for the purpose of assisting in the settlement of this action;
5 and

6 (h) Such other persons as the parties may agree to in writing, or who may
7 be designated by the Court.

8 7. Prior to receiving any documents, things, testimony, or other
9 information designated as "CONFIDENTIAL" or "CONFIDENTIAL–
10 ATTORNEYS' EYES ONLY," each "qualified person" specified above in
11 paragraphs 6(d) and (e) and 7(d) shall be provided with a copy of this Protective
12 Order and shall execute a Nondisclosure Agreement in the form of Attachment A.
13 Counsel who disclose designated Confidential Information to such a "qualified
14 person" shall maintain the executed copy of the Nondisclosure Agreement in his or
15 her file and make it available at or in connection with any Court proceeding where
16 it may be called for.

17 8. This Protective Order shall not expand or restrict the rights of any
18 party to either demand the production of any documents, things, or information, or
19 to object to any demand for documents, things, or information, or to withhold any
20 documents, things, or information. Nor shall this Protective Order expand or
21 restrict the rights of any party to seek to have the Court compel the production of
22 any documents, things, or information.

23 9. This Protective Order shall not restrict the rights of any party to use or
24 disseminate any documents, things, or information obtained independently of
25 discovery in this action, whether or not such documents, things, or information are
26 also obtained through discovery. Nothing in this Protective Order shall restrict a
27 party from using, disclosing, or disseminating its own documents, things, or
28 information as it deems appropriate, whether or not such documents, things, or

1 information have been designated “CONFIDENTIAL” or “CONFIDENTIAL–
2 ATTORNEYS’ EYES ONLY” in accordance with this Protective Order.

3 10. If any documents, things, or information designated as
4 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” are
5 included with any papers filed with the Court, the proposed filing shall be
6 accompanied by an application to file the papers, or the portion thereof containing
7 the protected information, under seal. This application shall be directed to the
8 judge to whom the papers are directed. In addition, the filing party shall file such
9 papers and materials under seal in accordance with the procedures required by
10 California Central District Local Rule 79-5 or other similar Court rules that may be
11 controlling at the time of the filing of such papers or materials.

12 11. In the event that any documents, things, or information designated as
13 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” are
14 used in any Court proceeding in this action, the parties shall take all reasonable
15 steps to maintain their confidentiality, provided that any protective measures
16 relating to confidential information used in Court proceedings in this matter shall
17 be presented, at an appropriate time, to the judicial officer conducting the
18 proceeding.

19 12. Maintenance of the protected status of any “CONFIDENTIAL” or
20 “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” documents, things, or
21 information shall in all cases be subject to further order of the Court. Nothing
22 herein shall preclude any party upon proper notice to all other parties from applying
23 to the Court for any modification of this Protective Order, or moving the Court for
24 an order changing the status of any particular designated information or document,
25 or relieving a party from the restrictions contained in this Protective Order, or from
26 applying to the Court for further or additional protective orders. Any motion filed
27 with respect to this Protective Order or documents, things, or information labeled
28 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” must

1 comply with the Local Rules. Matters designated as “CONFIDENTIAL” or
2 “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” shall remain so designated
3 under the terms of this Protective Order until and unless determined otherwise by
4 the Court.

5 13. No party shall be obligated to challenge the propriety of the designation of
6 any documents, things, or information as “CONFIDENTIAL” or
7 “CONFIDENTIAL–ATTORNEYS’ EYES ONLY,” and the failure to do so shall
8 not constitute acquiescence as to the appropriateness of the designation or
9 otherwise preclude a subsequent challenge to the designation.

10 14. The inadvertent production of any confidential document lacking the
11 physical designation “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’
12 EYES ONLY” shall be without prejudice to any subsequent claim that such
13 material is confidential, and no party shall be held to have waived any rights by
14 such inadvertent production. Upon written demand of the producing party or non-
15 party, all copies of any confidential document lacking the physical designation
16 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” shall
17 be returned immediately to the producing party. The producing party will supply to
18 each of the other parties a copy of the document properly designated
19 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY”
20 concurrently with the written demand for return. Any disclosure made before such
21 notification shall not be deemed to be in violation of this Protective Order.

22 15. The inadvertent production of any privileged document or any
23 document protected from disclosure by the work product doctrine shall be without
24 prejudice to any subsequent claim that such document is privileged or protected
25 from disclosure by the work product doctrine. The failure to designate any
26 document in accordance with the terms of this Protective Order shall not, by itself,
27 be deemed an automatic waiver of the privilege or the work product doctrine.

28 16. At the final conclusion of this action, including any appeal or time for

1 appeal, any party may serve a written notice on the other parties demanding that the
 2 “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY”
 3 documents and things that were produced by that party and that are still in
 4 existence, including all copies, summaries, excerpts, and abstracts thereof, be
 5 returned or destroyed. Within thirty (30) days of receipt of such a demand, counsel
 6 shall certify in writing that such documents and things have been returned or
 7 destroyed. Notwithstanding the foregoing, counsel may retain archival copies of
 8 documents consisting of or containing Confidential Information, including trial,
 9 hearing, and deposition transcripts and exhibits, and pleadings and other documents
 10 submitted to the Court. Counsel may also retain documents or things that are their
 11 own work product or that are subject to the attorney-client privilege.

12 17. The parties to this agreement may change its terms or effects at any
 13 time by further mutual agreements in writing as approved by the Court.

14 18. This Protective Order is entered solely for the purpose of facilitating
 15 the exchange of documents, things, and information between the parties in this
 16 action. Nothing in this Protective Order nor the production of any documents,
 17 things, or information under the terms of this Protective Order nor any proceedings
 18 pursuant to this Protective Order shall be deemed to have the effect of an admission
 19 or waiver of any kind by any party, including but not limited to the right of any
 20 party to oppose or object to production of any information, documents, or things.

21 19. The parties and their attorneys and any other persons subject to the
 22 terms of this Protective Order agree that the Court shall have jurisdiction over them
 23 for the purpose of enforcing this Protective Order.

24
 25 Dated: April 22, 2013

/s/John E. McDermott
 JOHN E. McDERMOTT
 United States District Magistrate

Attachment A

NONDISCLOSURE AGREEMENT

I, _____, state that:

1. My address is

_____.

2. My current employer is

_____.

3. My present occupation or job title is

_____.

4. I have received a copy of the Protective Order entered in the case of *United Fabrics International, Inc. v. Mackson, Inc., et al.*, United States District Court for the Central District of California Case No. CV12-7224 RGK (JEMx).

5. I have read and understand the Protective Order. I hereby agree to comply with all of the terms of the Protective Order, including holding in confidence and not disclosing to any unqualified person all documents, things, or information designated "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

6. I hereby consent to the jurisdiction of the United States District Court for the Central District of California for the purposes of enforcing the Protective Order and this agreement to be bound thereby.

Dated: _____

SIGNATURE

PRINT NAME